

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

**DePuy Mitek, Inc.)
a Massachusetts Corporation)
Plaintiff,)
v.) Civil No. 04-12457 PBS
Arthrex, Inc.)
a Delaware Corporation and)
Pearsalls Ltd.)
a Private Limited Company)
of the United Kingdom)**

Defendants.

**DePuy Mitek's Motion for Summary Judgment of Infringement & Opposing
Arthrex's Motion for Summary Judgment of Noninfringement**

Plaintiff DePuy Mitek (“Mitek”) moves this Court, pursuant to FED. R. CIV. P. 56, for summary judgment that Defendant Arthrex, Inc. (“Arthrex”) literally infringes claims 1, 2, 8, 9, and 12 of Mitek’s U.S. Patent No. 5,314,446 (“446 Patent”) by selling its FiberWire surgical suture. Mitek’s motion should be granted because there is no genuine issue of material fact that the accused FiberWire PET/PE braided sutures literally possess each and every element recited in Claims 1, 2, 8, 9 and 12 of Mitek’s 446 Patent.

Mitek also opposes Arthrex’s Motion for Summary Judgment of Noninfringement. Arthrex’s motion should be denied because Mitek has satisfied its burden of producing admissible evidence from which a reasonable trier of fact could find for it on the infringement issues and there are genuine issues of material fact precluding a determination of Arthrex’s motion on summary judgment.

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